

PLAINTIFFS

IRMA LUZ CORTES CUEVAS

DEFENDANTS

FIRST BANK
PO BOX 9146
SAN JUAN, PR 00908-0146

ATTORNEYS (Firm Name, Address, and Telephone No.)
JUAN O. CALDERON LITHGOW
 PO BOX 1710
 VEGA BAJA, PR 00694-1710
 TEL:787-858-5476 FAX:787-858-5476

ATTORNEYS (If Known)

PARTY (Check one box only) 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 U.S. NOT A PARTY

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
CRAMDOWN, VALUATION OF COLLATERAL AND DETERMINATION OF EXTENT OF THE LIEN

NATURE OF SUIT

(Check the one most appropriate box only)

<input type="checkbox"/> 454 To Recover Money or Property	<input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan	<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of the foregoing causes of action
<input checked="" type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property	<input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523	<input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court
<input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property	<input type="checkbox"/> 434 To obtain an injunction or other equitable relief	<input type="checkbox"/> 499 Other (specify)
<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727	<input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan	

ORIGIN OF PROCEEDINGS

 1 original Proceeding 2 Removed Proceeding 4 Reinstated or Reopened 5 Transferred from Another Bankruptcy Court CHECK IF THIS A CLASS ACTION UNDER F.R.C.P. 23

(Check one box only.)

DEMAND

NEAREST THOUSAND \$ 0.00

OTHER RELIEF SOUGHT
VALUATION OF COLLATERAL JURY DEMAND

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR

IRMA LUZ CORTES CUEVAS

BANKRUPTCY CASE NO.

09-07503 SEK

DISTRICT IN WHICH CASE IS PENDING
District of PUERTO RICO

DIVISIONAL OFFICE

NAME OF JUDGE
HON. SARA DE JESUS

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF

DEFENDANT

ADVERSARY PROCEEDING NO.

DISTRICT

DIVISIONAL OFFICE

NAME OF JUDGE

FILING FEE

(Check one box only)

 FEE ATTACHED FEE NOT REQUIRED FEE IS DEFERREDDATE
February 16, 2010PRINT NAME
JUAN O. CALDERON LITHGOW, ESQ
USDC 205607

SIGNATURE OF ATTORNEY (OR PLAINTIFF)

/s/ Juan O. Calderon Lithgow USDC 205607

1 IN THE UNITED STATES BANKRUPTCY COURT
2

District of Puerto Rico

3 COMPLAINT

4 IN RE:

5 IRMA LUZ CORTES CUEVAS

6 Debtor

7 IRMA LUZ CORTES CUEVAS

8 Plaintiff

9 vs.

10 FIRST BANK

Defendant

11 ALEJANDRO OLIVERAS RIVERA,

12 Trustee

Case No. 09-07563 SEK

CHAPTER 13

ADVERSARY NO.

11 U.S.C. §506(a); CRAMDOWN,
VALUATION OF COLLATERAL, AND
DETERMINATION OF EXTENT OF LIEN

13 COMPLAINT TO DETERMINE VALUE OF LIEN , AND TO PROVIDE FOR THE
14 SURRENDER OF TITLE TO DEBTOR
15 UPON FULL PAYMENT OF SECURED PORTION OF CLAIM

16 TO THE HONORABLE COURT:

Come now the Debtor, by her attorney, and respectfully states and prays as follows

17 INTRODUCTION

18

19 1. This is a complaint seeking a judgment determining the value of a collateral, and to provide
20 for the surrender of title to the collateral upon full payment of secured portion of the claim.
21 This complaint seeks to strip defendant's lien to the extent of the value of property over which
22 the lien is attached pursuant to 11 U.S.C. § 506(a) and 11 U.S.C. §1325(a)(5)(B)(ii).

23 JURISDICTION OF THIS COURT

24

25 2. Jurisdiction is invoked under 28 United States Code U.S.C. §157 (a)(b)(1) and §1334. This
26 is a core proceeding.

27

28

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2 COMPLAINT
3

4 VENUE
5

6 3. Venue is proper in this District Court under 28 U.S.C. §1408 & §1409, inasmuch as all the
7 events or omissions giving rise to the claims of the captioned case occurred within the
territory of this jurisdictional district.
8

9 PARTIES
10

11 4. IRMA LUZ CORTES CUEVAS, hereinafter debtor, is the petitioner in a Chapter 13 case
under the Bankruptcy Code, Case No. 09-07503 SEK
12 Defendant, FIRST BANK, hereinafter designated as FIRST BANK, is a secured creditor in
13 this case.
14

15 FACTS
16

17 5. The Debtor filed the instant voluntary petition under chapter 13 of the Bankruptcy Code on
July 16, 2009.
18 6. Debtor has a property interest in a 2008 Pontiac Solstice motor vehicle which is subject to
a lien arising out of a duly registered conditional sale agreement in favor of FIRST BANK.
19 The conditional sale agreement was originated on August 2, 2008.
20 7. FIRST BANK filed claim number 1 by an amount of \$36,282.20.
21 Detail of money involved in the initial transaction as per claim number1 is as follows:
22

Sale Price	\$36,995.00
insurance	\$3,621.00
Financing Declaration	\$10.00
Inscription charges	\$185.00
Sale Total	\$40,811.00
Down Payment	\$5,100.00
Amount Financed	\$35,711.00
Interes Charged	\$19,729.00
Principal + interest	\$55,440.00

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COMPLAINT

Money expected by creditor to be received as per claim number 1 is as follows:

Payoff-claimed + interestof \$16,598.80	\$52,880.80
Rate	15.95%
Length	5years Plan
Monthly if paid in plan	\$881.35

Market value of vehicle and interest accrued at 6.89% as proposed in cram down

VALUE OF COLLATERAL	INTEREST PAID DURING LENGTH BY YEAR OF PLAN	INTEREST RATE	CUMMULATIVE INTEREST
\$10,810.00			
1ST YEAR	\$596.61	6.89%	\$596.61
2ND YEAR	\$478.73		\$1,075.34
3RD YEAR	353.58		\$1,428.91
4TH YEAR	\$220.70		\$1,649.62
5TH YEAR	\$79.64		\$1,729.26
TOTAL INTEREST	\$1729.26		
	VALUE +ACCRUED INTEREST	\$12,539.26	

Impact of Cram-down on debtor if vehicle is paid within the plan

Payoff-Market value + interest	\$12,539.26
Rate	6.89%
Length	5 years plan
Monthly (approximately)	\$208.99

8. The "private sale" value of the 2008 Pontiac Solstice is \$12,635.00.00 as per Kelly Blue Book (<http://www.kbb.co>). The vehicle is in excellent condition and its mileage is approximately 25,000. Copy of the recently issued internet printout, which can be freely obtained, is attached to this Motion and marked Exhibit I.
9. The value of the collateral (\$10,810.00) is less than the total amount of the claim filed by creditor (claim number 1 by \$36,282.20).
10. The Chapter 13 plan filed by the debtor, dated September 4, 2009, copy of which is attached to this Motion and marked Exhibit II, proposes, with respect to FIRST BANK's claim, to pay the value of the collateral in the amount of \$10,810.00, and provide adequate protection to this creditor by means of interest at a rate of 6.89% per annum, to ensure present value.

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2 COMPLAINT

3 11. The plan provides also for insurance to be provided to FIRST BANK directly by the
4 debtor through TRIPLE S PROPERTY INSURANCE for the last two months of extension
5 of the original contract.

6 12. Other provisions in the plan for this creditor are that the Trustee will pay this Claim ahead
7 of other secured creditors as adequate protection due to accelerated depreciation of the
8 Collateral and as additional adequate protection, pre-confirmation disbursements up to
9 confirmation of the plan upon filing of the claim, in the amount of \$116.00 per month.

10 13. FIRST BANK will receive pro rata disbursements for the unsecured balance of such claim
11 as it is filed.

12 14. The plan also provides that title to the collateral shall be surrendered to the debtor upon
13 payment in full by the Trustee of the secured portion of FIRST BANK's Claim.

14 15. The prime rate on the date the petition was filed was of 5.26%. A quote of the current
15 prime rate can be obtained from www.bankrate.com/brm/ratewatch/leading-rates.asp. A
16 quote and a historical list of the prime rate can be obtained from the internet site for the
17 U.S. Federal Reserve Board at www.economagic.com/em-cgi/data.exe/fedbog/prime.

18 16. The debtor is exercising the "cram down" option for which 11 U.S.C. §1325 (a)(5)(B)
19 provides, by paying the creditor the present value at 6.89% per annum (5.26% plus 1.5%
20 as a risk factor) of the total amount of the value of the collateral during the life of the plan,
21 while the creditor will retain the lien until the secured portion of the claim is paid in full.

22 17. The value of the allowed secured claim is governed by 11 U.S.C. § 506 (a) which
23 provides that "(a)n allowed claim of a creditor secured by a lien on property in which the
24 estate has an interest,, is a secured claim to the extent of the value of such creditor's
25 interest in the estate's interest in such property, ..., and is an unsecured claim to the extent
26 that the value of such creditor's interest ... is less than the amount of such allowed claim.

27 18. In *Associates Commercial Corporation v. Elray Rash, et ux.*, 520 U.S. 953, 117 S. Ct.
28 1879, 138 L. Ed. 148 (1997), it was clearly stated that the appropriate standard for

1 Pag. 5
2 COMPLAINT

3 valuation is replacement cost:

4 "In sum, under §506(a), the value of property retained because the debtor has exercised the
5 §1325(a)(5)(B) "cram down option is the cost the debtor would incur to obtain a like asset
6 for the same "proposed... use"."

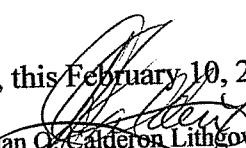
7 19. In Till v. SCS Credit Corp. 124 S Ct. 1951, 2004 U.S. LEXIS 3385, Decided May 17,
8 2004, the Supreme Court established that in order to allow secured creditors to receive
9 deferred installments that would equal the allowed secured claim's present value, courts
10 must choose a rate (of interest) high enough to compensate a creditor for its risk but not so
11 high as to doom the bankruptcy plan.

12 20. The balance of any claim of FIRST BANK is allowable only as unsecured claim.

13 WHEREFORE, debtor respectfully prays that this court:

14 1. Determines that the method of valuation specified above is appropriate,
15 2. Value the interest of FIRST BANK in the automobile at \$10,810.00;
16 3. Determine the allowed secured claim of FIRST BANK. to be \$10,810.00 pursuant to 11
17 U.S.C. § 506(a) with the balance allowed as an unsecured claim only;
18 4. Determine that the 6.89% rate of interest offered by debtor is adequate to compensate
19 creditor for the present value of its allowed secured claim plus a reasonable risk factor;
20 5. Declare and Order FIRST BANK to surrender title to the automobile to debtor upon
21 payment in full of its allowed secured claim through the plan;
22 6. Allow the remaining difference between FIRST BANK's total claim and the value of the
23 collateral as an unsecured claim.

24 Respectfully submitted, in San Juan, Puerto Rico, this February 10, 2010

25 
26 /s/ Juan O. Calderon Lithgow
27 JUAN O. CALDERON LITHGOW
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E-mail: juan004@prtc.net
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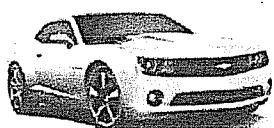
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Solstice

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Payment Calculator
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Print For Sale Sign

BLUE BOOK® PRIVATE PARTY VALUE



Condition	Value
Excellent	\$10,810
Good	\$10,010
Fair	\$8,910

More Photos

NEXT STEP: SEARCH LOCAL LISTINGS

Free CARFAX Record Check

Powered by CARFAX

VIN:

No VIN? No Problem!

Average Consumer Rating (154 Reviews)

Read Reviews

4.6 out of 5

Review this Vehicle

Similar New Vehicles

2009 Pontiac Solstice



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Review
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2009 Mitsubishi Eclipse



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FIND THE RIGHT CAR

Compare Used vs. New

\$10,000 to \$15,000

Both New and Used

Convertible

To View List, Click

VIEW ANOTHER VEHICLE

Select Year...

Select Make...

Select Model...

Or Search by Category

Or Change ZIP Code

Vehicle Highlights

Mileage: 50,000
Engine: 4-Cyl. 2.4 Liter
Transmission: 5 Speed Manual
Drivetrain: RWD

Selected Equipment

Standard

Power Steering
Tilt Wheel
AM/FM Stereo

Change Equipment

Alloy Wheels

Blue Book Private Party Value

Kelley Blue Book Private Party Value is the amount a buyer can expect to pay when buying a used car from a private party. The Private Party Value assumes the vehicle is sold "As Is" and carries no warranty (other than any remaining factory warranty). The final sale price may vary depending on the vehicle's actual condition and local market conditions. This value may also be used to

derive Fair Market Value for insurance and vehicle donation purposes.

Vehicle Condition Ratings

Check Vehicle Title History

Excellent	\$10,810

- Looks new, is in excellent mechanical condition and needs no reconditioning.
- Never had any paint or body work and is free of rust.
- Clean title history and will pass a smog and safety inspection.
- Engine compartment is clean, with no fluid leaks and is free of any wear or visible defects.
- Complete and verifiable service records.

Less than 5% of all used vehicles fall into this category.

Good

	\$10,010

- Free of any major defects.
- Clean title history, the paints, body, and interior have only minor (if any) blemishes, and there are no major mechanical problems.
- Little or no rust on this vehicle.
- Tires match and have substantial tread wear left.
- A "good" vehicle will need some reconditioning to be sold at retail.

Most consumer owned vehicles fall into this category.

Fair

	\$8,910

- Some mechanical or cosmetic defects and needs servicing but is still in reasonable running condition.
- Clean title history, the paint, body and/or interior need work performed by a professional.
- Tires may need to be replaced.
- There may be some repairable rust damage.

Poor

	N/A

- Severe mechanical and/or cosmetic defects and is in poor running condition.
- May have problems that cannot be readily fixed such as a damaged frame or a rusted-through body.
- Branded title (salvage, flood, etc.) or unsubstantiated mileage.

Kelley Blue Book does not attempt to report a value on a "poor" vehicle because the value of these vehicles varies greatly. A vehicle in poor condition may require an independent appraisal to determine its value.

* Puerto Rico 2/16/2010

Accurate Condition Appraisal

Change Condition

Accurately appraising the condition of a vehicle is an important aspect in determining its Blue Book value. Taking our 16 question condition quiz will ensure you know the correct condition rating.

NEXT STEP: SEARCH LOCAL LISTINGS

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE: IRMA LUZ CORTES CUEVAS

DEBTOR(S)

BK. CASE # 09-07503 SEK

CHAPTER 13

CHAPTER 13 PAYMENT PLAN

NOTICE: The following plan contains provisions which may significantly affect your rights. You should read this document carefully and discuss it with your attorney. When confirmed, the plan will bind the debtor and each creditor to its terms. Objections must be filed in writing with the Court and served upon the debtor(s), debtors' counsel, the Trustee and any other entity designated by the Court, at the 341 meeting of creditors or not less than twenty (20) days prior to the scheduled confirmation hearing. For post confirmation Plan Modifications, objections must be filed and notified in the same manner within twenty (20) days from its notification. • This plan does not allow claims. Any party entitled to receive disbursements from the Trustee must file a proof of claim. The Trustee will pay the allowed claims, as filed, provided for in the plan, unless disallowed or expressly modified by the Court and / or the terms of the plan. If no claim is filed, the Trustee will not pay a creditor provided for in the plan, unless ordered by the Court. If the Trustee is to make POST-PETITION REGULAR MONTHLY PAYMENTS to any Secured obligation, then a proof of claim must be filed including the following information: account number, address, due date and regular monthly payment. Secured creditor must notify any change in the monthly payment, three (3) months prior to the effective date of new payment. Those post-petition monthly payments will not exceed the life of the plan. • See the notice of commencement of case for 341 meeting date and claims bar date, the latter is the date by which a proof of claim must be filed in order to participate of the plan distribution.

1. The future earnings of the Debtor(s) are submitted to the supervision and control of the Trustee and the Debtor(s) shall make payments to the Trustee:
 directly by payroll deductions, as hereinafter provided in the PAYMENT PLAN SCHEDULE.
2. The Trustee shall distribute the funds so received as hereinafter provided in the DISBURSEMENT SCHEDULE.
3. The Confirmation Order will not vest property of the Estate on Debtor(s) until the Order discharging Debtor(s) is entered.

PLAN DATED: September 4, 2009

 PRE POST-CONFIRMATION AMENDED PLAN DATED:FILED BY DEBTOR TRUSTEE UNSECURED CREDITOR

I. PAYMENT PLAN SCHEDULE		
\$ 200.00	x 60	= \$ 12,000.00
\$ 0.00	x 0	= \$ 0.00
\$ 0.00	x 0	= \$ 0.00
\$	x	= \$
\$	x	= \$
TOTAL =	60	\$ 12,000.00

Additional Payments:

\$ 1,500.00 to be paid as a LUMP SUM
within _____ with proceeds to come from _____

Sale of property identified as follows:

Other: ADDITIONAL PAYMENTS WILL COME FROM TAX REIMBURSEMENT AT A RATE OF \$300.00 PER YEAR.

Periodic Payments to be made other than and in addition to the above.

\$ _____ x _____ = \$ _____

To be made on: _____

PROPOSED PLAN BASE: \$ 13,500.00

II. ATTORNEY'S FEES

To be treated as a § 507 Priority, and paid before any other creditor and concurrently with the Trustee's fees, unless otherwise provided:

- a. Rule 2016(b) Statement: \$ 3,000.00
- b. Fees Paid (Pre-Petition): (\$ 126.00)
- c. R 2016 Outstanding balance: (\$ 2,874.00)
- d. Post Petition Additional Fees: \$ 0.00
- e. Total Compensation: \$ 3,000.00

Signed: /s/ IRMA LUZ CORTES CUEVAS
DEBTOR

JOINT DEBTOR

III. DISBURSEMENT SCHEDULE SEQUENCE		
A. SECURED CLAIMS: <input type="checkbox"/> Debtor represents that there are no secured claims. <input checked="" type="checkbox"/> Secured creditors will retain their liens and shall be paid as follows:		
<input checked="" type="checkbox"/> ADEQUATE PROTECTION Payments: Cr. \$ 0.00		
Cr. BPPR	Cr. FIRSTBANK	Cr. _____
Acct. XXXXXXXXXXXX6715	Acct. XXXXXXXXXXXX0845	Acct. _____
\$ 1,225.00	\$ 2,355.00	\$ _____
<input type="checkbox"/> Trustee will pay REGULAR MONTHLY PAYMENTS: (please refer to the above related notice, for important information about this provision)		
Cr. _____	Cr. _____	Cr. _____
Acct. _____	Acct. _____	Acct. _____
Monthly Pymt. \$ _____	Monthly Pymt. \$ _____	Monthly Pymt. \$ _____
<input type="checkbox"/> Trustee will pay IN FULL Secured Claims: Cr. _____ Cr. _____ Cr. _____		
\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Trustee will pay VALUE OF COLLATERAL: Cr. _____ Cr. _____ Cr. _____		
\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Secured Creditor's interest will be insured. INSURANCE POLICY will be paid through plan: Cr. _____ Ins. Co. Premium: \$ _____		
(Please indicate in "Other Provisions" the insurance coverage period)		
<input checked="" type="checkbox"/> Debtor SURRENDERS COLLATERAL TO Lien Holder: <input checked="" type="checkbox"/> Debtor will maintain REGULAR PAYMENTS DIRECTLY to: BPPR & FISRT BANK		
B. PRIORITIES. The Trustee will pay §507 priorities in accordance with the law [§1322 (a)(2)]. <input type="checkbox"/>		
C. UNSECURED PREFERRED: Plan <input type="checkbox"/> Classifies <input checked="" type="checkbox"/> Does not Classify claims <input type="checkbox"/> Class A: <input checked="" type="checkbox"/> Co-debtor Claims: <input type="checkbox"/> Pay 100% <input type="checkbox"/> "Pay Ahead" <input type="checkbox"/> Class B: <input checked="" type="checkbox"/> Other Class: <input type="checkbox"/> Cr. \$ _____ <input type="checkbox"/> Cr. \$ _____ <input type="checkbox"/> Cr. \$ _____		
D. GENERAL UNSECURED NOT PREFERRED: (Case Liquidation Value = \$ 0.00) <input type="checkbox"/> Will be paid 100% plus % Legal Interest. <input type="checkbox"/> Will be paid Pro-Rata from any remaining funds		

OTHER PROVISIONS:

ATTORNEY FOR DEBTOR: /s/ JUAN O. CALDERON-LITHGOW Phone: (787) 858-5476